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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

MARINA LIMON et al., Plaintiffs and Appellants, v. DEPARTMENT OF FINANCE, Keely Martin Bosler as Director et al., Defendants and Respondents.	C082501 (Super. Ct. No. 34201480001994CUWMGDS)

This appeal challenges an award of attorney fees under Code of Civil Procedure section 1021.5.[1] In *Limon et al. v. Garden Grove Agency for Community Development et al.; Garden Grove MXD et al.* (Super. Ct. Orange County, 2009, No. 30-2009-00291597)

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1 Undesignated statutory references are to the Code of Civil Procedure.

(*Limon I*), Marina Limon and other residents of an RV park that was demolished in Garden Grove, as well as a nonprofit affordable housing advocacy organization, (collectively, Limon) brought an action in the Orange County Superior Court against the Garden Grove Agency for Community Development (Redevelopment Agency) before that agency, along with nearly 400 other redevelopment agencies across the state, was dissolved by the Legislature in what we have previously referred to as the "Great Dissolution." (*City of Pasadena v. Cohen* (2014) 228 Cal.App.4th 1461, 1463.) Following the dissolution, Limon obtained a judgment against the former Redevelopment Agency and that agency's successor agencies, i.e., the City of Garden Grove (the City) and the Garden Grove Housing Authority. The judgment included an obligation to pay about $140,000 in relocation assistance and almost $800,000 in attorney fees. These fees are not challenged in this appeal.

In *Limon et al. v. California Department of Finance et al.; City of Garden Grove as Successor et al.* (Super. Ct. Sacramento County, 2014, No. 34-2014-80001994CUWMGDS) (*Limon II*), after the Department of Finance (the Department) declined to authorize payment of the *Limon I* judgment out of the Redevelopment Property Tax Trust Fund (RPTTF), Limon brought this action in the Sacramento County Superior Court seeking to compel the Department to treat that judgment as an enforceable obligation payable out of the RPTTF. Limon prevailed and moved for an award of over $630,000 in attorney fees incurred in the *Limon II* matter. The trial court awarded such fees under section 1021.5, but reduced the amount to about $140,000. In arriving at this figure, the trial court reduced the number of compensable hours from 847.5 hours to 640 hours and used "local Sacramento rates of $205 to $420 per hour" to calculate the lodestar amount, rather than " 'Los Angeles' billing rates of up to $800 per hour" sought

by Limon. The trial court then apportioned 40 percent of the responsibility for payment of the lodestar amount to Limon on account of their "personal interests" in the matter. Finally, the trial court applied a multiplier of 1.2 to the remaining 60-percent portion of the lodestar amount apportioned to the Department, resulting in the challenged award of about $140,000.

Limon contends the trial court abused its discretion in three respects: (1) using Sacramento market rates in calculating the lodestar amount; (2) reducing the number of compensable hours without an adequate justification; and (3) apportioning 40 percent of the responsibility for payment of attorney fees to Limon. We conclude the trial court was well within its discretion in calculating the lodestar amount. Limon did not establish obtaining local counsel would have been impracticable such that the trial court was required to use Los Angeles rates as opposed to Sacramento rates. The trial court also provided a sufficient justification for reducing the amount of compensable hours. However, the trial court did abuse its discretion in apportioning 40 percent of the attorney fee responsibility to Limon on the basis of not only their financial incentives in bringing the *Limon II* action, but also that of their attorneys. We must therefore remand the matter for reconsideration of the attorney fee motion.

BACKGROUND

The background facts are largely undisputed. We also provide some statutory context for various claims made in the successive actions.

Limon I

The Redevelopment Agency acquired the Travel Country RV Park in Garden Grove in order to demolish the park and transfer the site to a private developer

to build a hotel and water park. As a result, residents of the RV park were forced to relocate.

In August 2009, Limon, i.e., several of the displaced residents and the Kennedy Commission, a nonprofit affordable housing advocacy organization, filed a petition for writ of mandate and complaint for declaratory and injunctive relief (writ petition) in the Orange County Superior Court. The writ petition sought, among other things, to require the Redevelopment Agency to adopt (1) a replacement housing plan in compliance with the Community Redevelopment Law (CRL) (Health & Saf. Code, § 33000 et seq.), including replacement of 100 percent of the low-income housing units destroyed in the demolition of the RV park, and (2) a relocation assistance plan in compliance with the California Relocation Assistance Act (CRAA) (Gov. Code, § 7260 et seq.). The writ petition also sought judicial declarations that the Redevelopment Agency unlawfully displaced the former residents of the RV park without the benefits and assistance required by the CRAA and also failed to comply with various requirements of the CRL.

While this action was pending, the Legislature dissolved the Redevelopment Agency, along with nearly 400 other redevelopment agencies across the state, effective February 1, 2012. (Health & Saf. Code, §§ 34170, 34172; see *California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 250-252.) Thereafter, Limon amended the writ petition to add as defendants and respondents the City of Garden Grove and the Garden Grove Housing Authority, successor agencies to the former Redevelopment Agency.

The parties ultimately agreed to the following resolution of the matter. The successor agencies would be required to cause the development, rehabilitation, or

construction of 38 low-income to very low-income replacement housing units, giving priority for occupancy to former residents of the RV park. These agencies would also be required to pay $141,540 in relocation assistance to the individual petitioners and 19 other former residents of the park, as well as $795,000 in attorney fees. The Orange County Superior Court entered a judgment comprised of these terms in May 2014.

Limon II

In September 2014, the City submitted a Recognized Obligation Payment Schedule (ROPS) to the Department for the period of January through June 2014, which included as Item No. 40 the amounts required to be paid under the *Limon I* judgment.

In order to provide some background, we note the legislation dissolving the redevelopment agencies (Dissolution Law) requires a successor agency to " '[e]xpeditiously wind down the affairs of the redevelopment agency' under 'the direction of the oversight board.' [Citation.] The oversight board consists of appointed members and has 'fiduciary responsibilities to holders of enforceable obligations.' [Citation.]" (*City of Petaluma v. Cohen* (2015) 238 Cal.App.4th 1430, 1435.) Enforceable obligations include "[j]udgments or settlements entered by a competent court of law . . . against the former redevelopment agency . . . ." (Health & Saf. Code, § 34171, subd. (d)(1)(D).) The successor agency prepares a ROPS for each six-month fiscal period, setting forth the minimum payment amounts for enforceable obligations, and the ROPS must be approved by the oversight board. (*Id*., §§ 34171, subds. (g) & (h), 34177, subd. (*l*)(1).) The ROPS is also submitted to the Department and the California State Controller, who have authority to require documentation relating to any enforceable obligation. (*Id*., § 34177, subds. (*l*)(2)(C) & (a)(2).) The Department then makes "its

determination of the enforceable obligations and the amounts and funding sources of the enforceable obligation." (*Id*., § 34177, subd. (m)(1).) In addition, the Department has authority to review actions of the oversight board and to eliminate or modify any item on a ROPS. (*Id*., § 34179, subd. (h).)

Returning to the events giving rise to *Limon II*, as required by the foregoing provisions, the oversight board approved Item No. 40. The Department rejected it, concluding, "this line item is not an enforceable obligation and is not eligible for [RPTTF] funding" because the oversight board did not approve the settlement agreement at the time it was entered into, but instead "purport[ed] to retroactively approve" that agreement.

In December 2014, Limon brought a writ petition against the Department, its Director, and the Orange County auditor-controller in the Sacramento County Superior Court. The writ petition sought a judicial declaration that the *Limon I* judgment is an enforceable obligation and injunctive relief compelling the Department to approve Item No. 40 on the ROPS. A week later, Limon filed an ex parte application for a temporary restraining order (TRO) and order to show cause (OSC) regarding issuance of a preliminary injunction. Limon sought to temporarily restrain the Department's disapproval of Item No. 40 and to further restrain the auditor-controller and successor agencies from otherwise distributing the funds necessary to pay the judgment. Limon also requested an OSC why the Department's disapproval should not be set aside and the funds immediately disbursed in the manner specified in the ROPS. The trial court granted the ex parte application in part, sequestering the amount of property tax revenues identified in the ROPS for relocation assistance payments to former residents of the RV

Park. The trial court also ordered the Department to show cause why the requested preliminary injunction should not issue.

In March 2015, the trial court granted Limon's request for a preliminary injunction sequestering the challenged funds pending a decision on the merits, while denying their request for a preliminary injunction ordering the funds to be immediately disbursed.

In June 2015, the trial court granted the requested declaratory and injunctive relief, concluding the *Limon I* judgment fell within the Dissolution Law's definition of "enforceable obligation" as a judgment or settlement entered by a competent court of law against the former redevelopment agency. The trial court rejected each of the Department's arguments that other provisions of the Dissolution Law rendered the judgment nevertheless unenforceable. A judgment was thereafter entered directing the Department to recognize the *Limon I* judgment as an enforceable obligation and to approve Item No. 40 of the ROPS. The judgment also ordered the $141,540 in RPTTF funds previously sequestered to be promptly disbursed for purposes of relocation assistance. A writ of mandate to the same effect also issued.

Attorney Fee Litigation

In September 2015, Limon moved for attorney fees pursuant to section 1021.5. After arguing their entitlement to such fees under this provision, Limon argued for a lodestar amount of $415,652 for work on the merits, to be multiplied by 1.4 to compensate the attorneys for the "contingent risk" involved and their "specialized knowledge of the Dissolution Law and redevelopment law." Limon sought an additional $49,252 for work on the fee motion, bringing the total amount sought to over $630,000. Because there is no dispute in this appeal regarding Limon's entitlement to attorney fees

under section 1021.5, or as to the multiplier ultimately selected by the trial court (1.2), we decline to describe those aspects of the fee litigation in any detail.

With respect to the requested lodestar amount, Limon submitted declarations supporting the following hours and rates on the merits: 61.5 hours at $760-790 per hour for attorney O'Malley, 140.5 hours at $280-295 per hour for attorney Kaspar, 137.3 hours at $590 per hour for attorney Vyas, 183.6 hours at $450 per hour for attorney Cowing, 15.5 hours at $275 per hour for attorney Segura, 33.7 hours at $775 per hour for attorney Rawson, and 190.3 hours at $700 per hour for attorney Castellanet. For the fee motion, attorneys Vyas, Cowing, Rawson, and Castellanet billed a total of 83.3 hours at their respective rates.

Limon also submitted a declaration from an experienced Los Angeles civil rights attorney familiar with the "billing rates for lawyers of similar skill, reputation and experience in the greater Los Angeles area," who opined the rates sought were "well within the range of reasonable market rates for attorneys of comparable skill, experience and reputation engaged in similarly complex litigation." Limon further submitted a declaration from the Kennedy Commission's executive director stating he was not aware of "any other firms—in Sacramento or otherwise—that could have litigated the case so successfully under such a tight timeframe," presumably referring to the fact that the Department disapproved Item No. 40 on December 17, 2014 and the Dissolution Law requires allocation of RPTTF amounts by January 2 of each year. (See Health & Saf. Code, § 34183, subd. (a)(1).)

In opposition to the fee motion, after arguing Limon was not entitled to attorney fees under section 1021.5, the Department argued the lodestar amount requested by Limon was inflated in two respects: (1) the hourly rates should be based on local

Sacramento rates, not those prevailing in Los Angeles; and (2) the number of hours *reasonably* expended in the litigation was 640 hours, about 75 percent of the 845.7 hours claimed by Limon. With respect to the hourly rates, the Department pointed out Limon was required to demonstrate hiring local counsel was impracticable and argued no such showing was made. In order to derive comparable Sacramento hourly rates, the Department utilized a United States Department of Justice billing matrix known as the *Laffey* Matrix.[2] This matrix provides billing rates for attorneys at various experience levels in the Washington, D.C. area and can be adjusted to establish comparable billing rates in other areas using data from the United States Bureau of Labor Statistics. Based on this method, the Department argued reasonable hourly rates would be $175 per hour for attorneys Segura and Kaspar, $225 per hour for attorney Cowing, $350 per hour for attorney Vyas, and $400 per hour for attorneys Rawson, O'Malley, and Castellanet.

With respect to the reduction in compensable hours, the Department pointed out the case "spanned only six months and involved no discovery" and argued the requested 845.7 attorney hours was "plainly excessive," citing a federal employment discrimination case in which the court determined a total of 120 attorney hours for researching and drafting a complaint was reasonable. Adding to that figure "perhaps 200 hours" for the TRO and preliminary injunction litigation, "another 180 hours" for briefing and argument on the merits of the writ petition, "perhaps 80 hours" for the attorney fee motion, and "perhaps 60 hours" for all other attorney activity in the case, including communication

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[2] The name derives from *Laffey v. Northwest Airlines, Inc.* (D.D.C. 1983) 572 F.Supp. 354 (affd. in part & revd. in part (D.C.Cir. 1984) 746 F.2d 4) overruled on other grounds in *Save Our Cumberland Mountains, Inc. v. Hodel* (D.C.Cir. 1988) 857 F.2d 1516, 1525.

with opposing counsel, the Department arrived at 640 hours of total compensable attorney time. Multiplying this number by the Sacramento rates set forth above, the Department's suggested lodestar amount was $195,567.50.

The Department also argued 50 percent of this lodestar amount should be apportioned to Limon because "the lawsuit benefitted [them] personally and the general public only partially or secondarily, if at all." As the Department explained its reasoning: "[Limon] and their attorneys will recover a total of $900,000-plus in cash, most of which is for the attorneys. The replacement housing is worth at least $20 million, but [Limon] and the other plaintiffs in [*Limon I*] have priority to obtain half of the total units to be built, and thus claim about half of the value for themselves. Hence [Limon] and their attorney[s] surely will consume at least half, or more than half, of the total recovery from [*Limon I*] as enforced herein. It is most logical for the Court to award [Limon] an attorney-fee sum that reflects a conservative 1:1 ratio of benefits to [Limon] versus benefits to third parties. In other words, a 50 percent reduction from the approximately $200,000 of total attorney work value reasonably determined, to roughly $100,000, is more than warranted here."

In reply to the Department's opposition, Limon argued the rates and hours requested were reasonable. Limon also argued apportionment of the fee award would be inappropriate because there was no "financial recovery" in the *Limon II* matter. Instead, Limon obtained declaratory and injunctive relief declaring the *Limon I* judgment an enforceable obligation under the Dissolution Law and directing the Department to approve Item No. 40 on the ROPS. Limon further argued relocation assistance and priority for low-income replacement housing obtained in the *Limon I* judgment should not be considered a financial benefit acquired in the *Limon II* matter, nor should the

attorney fees awarded in that underlying matter be considered in assessing *Limon's* financial gain.

The Challenged Fee Award

In awarding attorney fees, the trial court first concluded Limon met the statutory requirements set forth in section 1021.5. This determination is not challenged on appeal. We therefore need not describe the trial court's reasoning in this respect in any detail. We do, however, note the trial court concluded both *Limon I* and *Limon II* "conferred a significant benefit on the general public," the former because it enforced "the public right to affordable housing and the right of displaced persons to receive relocation assistance, which are important public rights," and the latter because, "[t]he practical effect of [*Limon II*] was to protect the rights won in the *Limon I* judgment." The trial court also correctly determined it could not "order that fees be paid out of the recovery because there is no 'recovery.' The relief granted in this action was to reverse [the Department's] determination that the *Limon I* judgment is not an enforceable obligation, so that funds could be released to the Successor Agency to perform its obligations." This will become important later.

Turning to the lodestar calculation, the trial court was "persuaded that the 'market rates' should be based on the rates charged by comparable attorneys for comparable work in the Sacramento legal community," explaining: "[Limon] filed this action in Sacramento due to the venue requirement of the Dissolution Law. [Citation.] [Limon et al.] rely on this fact to show they did not choose the forum, and may have preferred to litigate in Orange County. However, the fact that all Dissolution Law cases are filed in Sacramento establishes that Sacramento is the relevant community for determining the 'market rates' for such cases. [¶] [Limon et al.] have failed to show that hiring qualified

Sacramento counsel was 'impracticable' or that local counsel could not have provided the same services performed by [Limon's] Los Angeles-based attorneys." The trial court adopted the Department's use of the *Laffey* Matrix, adjusted for the Sacramento area, in determining what these comparable local rates should be. The trial court further agreed with the Department's position that "the total number of hours worked on this case should not have exceeded 640 hours." Thus, the trial court adopted the Department's calculation of the lodestar amount, i.e., $195,567.50.

Turning to the Department's argument regarding apportionment, the trial court noted such an apportionment "is permitted when the court concludes the successful litigant's personal financial interests warrant shifting a portion of the attorney fee burden to that party," citing *Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140 (*Collins*) and *Woodland Hills Residents Assn., Inc. v. City Council of Los Angeles* (1979) 23 Cal.3d 917 (*Woodland Hills*). The trial court concluded a 40 percent apportionment was warranted in this case because, despite its previous observation that there was no monetary "recovery" in *Limon II*, Limon nevertheless "had a significant financial incentive to bring this action based on the $795,000 attorney fee award from the *Limon I* action, and their share of the $140,000 in relocation payments." This 40-percent apportionment reduced the lodestar amount owed by the Department to $117,340.50.

Finally, the trial court enhanced the lodestar by a multiplier of 1.2, resulting in a total fee award of $140,808.60. There is no dispute in this appeal regarding the trial court's selection of 1.2 as an appropriate multiplier.

DISCUSSION

I

General Legal Principles

We begin by providing a brief overview of the legal principles governing an award of attorney fees under section 1021.5 and our review of such an award.

Section 1021.5 provides for an award of attorney fees "to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any."

This provision "codifies California's version of the private attorney general doctrine, which is an exception to the usual rule that each party bears its own attorney fees. [Citation.] The purpose of the doctrine is to encourage suits enforcing important public policies by providing substantial attorney fees to successful litigants in such cases. [Citation.]" (*Robinson v. City of Chowchilla* (2011) 202 Cal.App.4th 382, 390.) As our Supreme Court has explained: "The doctrine rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." (*Woodland Hills*, *supra*, 23 Cal.3d at p. 933.)

"[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. 'California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award.' [Citation.] The reasonable hourly rate is that prevailing in the community for similar work. [Citations.] The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary. [Citation.]" (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1095 (*PLCM Group*).)

In the trial court, "[t]he 'burden is on the party seeking attorney fees to prove that the fees it seeks are reasonable.' " (*Center For Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 615 (*Center For Biological Diversity*).) In an appeal challenging an attorney fee award, it is the appellant's burden to establish an abuse of discretion. (*Ibid*.) As our Supreme Court has explained: "The ' "experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong." ' [Citation.]" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) "Indulging all inferences in favor of the trial court's order, as we are required to do, we presume the trial court's attorney fees award is correct, and '[w]hen the trial court substantially reduces a fee or cost request, we infer the court has determined the request was inflated.' [Citation.]" (*McKenzie v. Ford Motor Co.* (2015) 238 Cal.App.4th 695, 703-704.)

II

Use of Local Rates in Calculating the Lodestar

Limon contends the trial court abused its discretion in using Sacramento market rates in calculating the lodestar amount. We disagree.

The lodestar calculation begins with a determination of the "reasonable hourly rate," i.e., the rate "prevailing in the community for similar work." (*PLCM Group, supra*, 22 Cal.4th at p. 1095.) The general rule is "[t]he relevant 'community' is that where the court is located." (*Altavion, Inc. v. Konica Minolta Systems Laboratory Inc.* (2014) 226 Cal.App.4th 26, 71.) "[U]se of reasonable rates in the local community, as an integral part of the initial lodestar equation, is one of the means of providing some objectivity to the process of determining reasonable attorney fees. Such objectivity is ' "vital to the prestige of the bar and the courts." ' [Citations.]" (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1243 (*Nichols*).)

However, "in the unusual circumstance that local counsel is unavailable," or that "hiring local counsel was impracticable," the trial court is not limited to the use of local rates and may instead use the hourly rate of out-of-town counsel from a higher fee market in calculating the lodestar amount. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 399 (*Horsford*).) In *Horsford*, the Court of Appeal held the trial court abused its discretion in using local Fresno rates in calculating the lodestar amount where the plaintiff submitted an uncontradicted declaration stating he unsuccessfully attempted to retain several local employment law attorneys to represent him before hiring out-of-town counsel from San Francisco. The court explained: "This evidence was overwhelming and uncontradicted; it simply provides no basis for the court's conclusion that 'there is no adequate showing that it was impossible or even

unusually difficult to find a local attorney to take the case.' While we doubt a plaintiff needs to make anything more than 'a good faith effort to find local counsel' [citation] in order to justify the fees of out-of-town counsel, the evidence in the present case satisfies even the higher standard adopted by the trial court." (*Id*. at pp. 398-399.)

Similarly, in *Center For Biological Diversity*, *supra*, 188 Cal.App.4th 603, the Court of Appeal held the trial court abused its discretion in using local San Bernardino rates in calculating the lodestar amount where "the only evidence on the issue of availability of local counsel showed plaintiffs' need to retain out-of-town counsel." (*Id*. at p. 619.) That evidence was a declaration from a member of the San Bernardino Audubon Society, one of the plaintiffs in the action. The declarant stated he was both "actively involved in environmental and conservation issues in the San Bernardino Mountains" and "familiar with the local San Bernardino attorney market," and to his knowledge "there [were] no local attorneys in San Bernardino County that regularly practice environmental law on behalf of environmental groups, will do such work on a contingent or reduced rate basis, and possess sufficient expertise . . . to represent Audubon or the other petitioners in this litigation." (*Id*. at p. 618.) The court explained: "A plaintiff's threshold showing of impracticability . . . is not onerous [citation], and the [above-described] declaration is sufficient and competent evidence that plaintiffs acted in good faith and hiring qualified counsel in the San Bernardino area was impracticable." (*Ibid*.; see also *Environmental Protection Information Center v. California Dept. of Forestry and Fire Protection* (2010) 190 Cal.App.4th 217, 249 [affirming trial court's use of out-of-town rates where one of the plaintiffs sought local counsel, who refused to undertake primary representation and stated in a declaration he knew of no other local

counsel who would have done so; other local attorneys submitted declarations stating they also would not have represented plaintiffs in the matter].)

In contrast, no such showing was made in *Nichols*, *supra*, 155 Cal.App.4th 1233. There, the plaintiff, a police dispatcher who settled a sexual harassment suit with the City of Taft, submitted a declaration stating that "because Taft and Bakersfield were small towns and law enforcement had 'close ties' with the legal community, she was 'fearful that [she] would not get fair and adequate legal representation by attorneys in Kern County." (*Id*. at p. 1238.) The trial court concluded this was not a sufficient demonstration of impracticability and therefore used local rates in calculating the lodestar amount, but nevertheless applied a lodestar multiplier "based on the out-of-town attorneys' higher rates." (*Id*. at p. 1244.) The Court of Appeal agreed the requisite showing was not made, explaining, "it is clear from plaintiff's declaration that, although she had concerns that she would be unable to find adequate representation, no effort was made to retain local counsel." (*Ibid*.) The court then reversed the fee award, holding the same showing was required to justify use of a multiplier to compensate for out-of-town rates: "Otherwise, the rule tethering the lodestar to local rates would be effectively bypassed, since a trial court could always account for out-of-town rates through the 'backdoor' by means of a multiplier, even when there was no showing that local attorneys were unavailable." (*Ibid*.; see also *Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1241 [affirming trial court's use of local rates where declarations supporting use of out-of-town counsel were "speculative" regarding central California attorneys being reluctant to represent minority plaintiffs in voting rights cases and "did not establish that appellants ever attempted to retain local counsel"].)

Limon argues that while the venue provisions of the Dissolution Law required them to file the *Limon II* action in Sacramento, local counsel were not "realistically available" to represent them in the matter in light of the "immediate statutory time pressures given [the Department's] December 17, 2014 determination [disapproving Item No. 40] and the imminent distribution of the RPTTF funds necessary to satisfy the judgment on January 2, 2015, just two weeks later." Because, argues Limon, local counsel would not have had the "familiarity with the events and issues in the underlying case" necessary to timely seek and obtain a TRO sequestering the property tax funds required to pay the *Limon I* judgment in this two-week time period, use of their out-of-town counsel was necessary. Limon further argues their "low incomes require that they rely on pro bono public interest counsel to represent them," and because they live in Orange County, "finding Sacramento pro bono counsel [would have been] even more challenging."

This argument is not supported by the declarations submitted with the fee motion. While we accept Limon's description of the financial situation faced by the individual plaintiffs, there is no evidence in the record indicating any such plaintiff sought to obtain local counsel. Nor is there evidence the executive director of the Kennedy Commission, Cesar Covarrubias, sought such counsel. Thus, this case is not like *Horsford*, *supra*, 132 Cal.App.4th 359, where the plaintiff unsuccessfully sought to retain several local attorneys before hiring out-of-town counsel. Covarrubias's declaration merely states he was not aware of "any other firms—in Sacramento or otherwise—that could have litigated the case so successfully under such a tight timeframe." However, unlike *Center For Biological Diversity, supra*, 188 Cal.App.4th 603, there is no indication in this declaration that Covarrubias has any familiarity with the Sacramento legal market, or that

based on such familiarity, he did not believe there were any Sacramento attorneys who regularly practice in the area of the Dissolution Law, would have been willing to take this case notwithstanding plaintiffs' inability to pay in advance, and possessed sufficient competence to get up to speed within the necessary timeframe. We conclude this case is closer to the situation in *Nichols, supra,* 155 Cal.App.4th 1233, where not only did the plaintiff not attempt to retain local counsel, but the reason for failing to do so was entirely speculative.

Nor are we persuaded by Limon's reliance on *In re Tobacco Cases I* (2013) 216 Cal.App.4th 570, in which the trial court awarded the People of the State of California attorney fees as prevailing parties in an action to enforce a consent decree against R.J. Reynolds Tobacco Company. The Court of Appeal held the trial court did not abuse its discretion in using out-of-town rates when calculating the lodestar amount rather than local San Diego rates, explaining the People demonstrated "it was impracticable to use assistant attorneys general from the Tobacco Section's San Diego office." (*Id.* at p. 582.) This showing was made by declarations from the former senior assistant attorney general who was head of the Tobacco Section when the litigation began and his successor in that position. In sum, the declarations established the two attorneys who handled the matter, from the Tobacco Section's Oakland office, were better equipped to handle the action than the only two attorneys in the San Diego office, who "were the least experienced litigators in the section, and both were heavily committed to other cases." (*Id.* at pp. 582-583.) Here, in sharp contrast, Limon has presented no evidence establishing there were no available Sacramento attorneys with the requisite experience to handle the *Limon II* action, even taking into account the compressed timeframe.

Limon's final argument with respect to the use of local rates is that the trial court abused its discretion in using the *Laffey* Matrix in determining what those local rates were. They are mistaken. As mentioned, the *Laffey* Matrix provides billing rates for attorneys at various experience levels in the Washington, D.C. area and can be adjusted to establish comparable billing rates in other areas using data from the United States Bureau of Labor Statistics. In California, while a trial court is not "*required* to follow the *Laffey* Matrix" in setting reasonable hourly rates, neither is it an abuse of discretion to do so. (*Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 702; see also *Nemecek & Cole v. Horn* (2012) 208 Cal.App.4th 641, 650-651.) Had the trial court in this case declined to use the *Laffey* Matrix, as the district court did in *Prison Legal News v. Schwarzenegger* (9th Cir. 2010) 608 F.3d 446, relied upon by Limon, we would likely affirm that decision as well. Whether or not to use the matrix is committed to the trial court's sound discretion. "The ' "experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong." ' [Citation.]" (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1132.)

In sum, because Limon did not establish obtaining local counsel would have been impracticable, we conclude the trial court was well within its discretion in using local Sacramento rates in calculating the lodestar amount. Nor was it an abuse of discretion to use the *Laffey* Matrix in ascertaining those local rates.

III

Reduction of Compensable Hours

Limon also claims the trial court abused its discretion in reducing the number of hours reasonably spent on the *Limon II* matter without an adequate justification. They are mistaken.

"[T]here is no general rule requiring trial courts to explain their decisions on motions seeking attorney fees. . . . A reduced award might be fully justified by a general observation that an attorney overlitigated a case or submitted a padded bill or that the opposing party has stated valid objections." (*Gorman v. Tassajara Development Corp.* (2009) 178 Cal.App.4th 44, 101.) While an attorney fee award "must be able to be rationalized to be affirmed on appeal," the trial court is not required to provide that rationale on the record or in the order awarding such fees; if a sufficient explanation appears to the appellate court, the award must be affirmed. (*Ibid*.) This is simply an application of the general rule of appellate review that " ' "[a]ll intendments and presumptions are indulged to support [the judgment] on matters as to which the record is silent, and error must be affirmatively shown." ' [Citation.]" (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1140.) Thus, where "the trial court severely curtails the number of compensable hours in a fee award, we presume the court concluded the fee request was padded." (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1325; see also *Maughan v. Google Technology, Inc.* (2006) 143 Cal.App.4th 1242, 1249-1252 [affirming trial court's reduction of "over 200 hours" of attorney time for preparing and litigating an anti-SLAPP motion and related fee motion to 50 hours based on the trial court's "experience with how much time attorneys should be spending and typically do spend on difficult and complex matters"].)

Limon submitted declarations supporting the following hours of attorney time on the merits: 61.5 hours for attorney O'Malley, 140.5 hours for attorney Kaspar, 137.3 hours for attorney Vyas, 183.6 hours for attorney Cowing, 15.5 hours for attorney Segura, 33.7 hours for attorney Rawson, and 190.3 hours for attorney Castellanet. For the fee motion, attorneys Vyas, Cowing, Rawson, and Castellanet billed a total of 83.3 hours, bringing the total to 845.7 hours of attorney time. Reducing this amount to 640 hours, the trial court noted the case "spanned only about six months and involved no discovery" and further stated it agreed with the Department's argument that 845.7 hours "is excessive" and "the total number of hours worked on this case should not have exceeded 640 hours." We presume this determination was based on the trial court's considerable experience presiding over comparable matters. There was no abuse of discretion.

Nevertheless, Limon argues the trial court essentially reduced the amount of compensable hours by 25 percent and relies on a federal rule requiring "the district court to provide a concise but clear explanation of its reasons for the fee award" (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 437 [76 L.Ed.2d 40]), with "a more specific articulation of the court's reasoning" required where the district court makes a significant percentage reduction in the amount of compensable hours. (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1111; *id*. at p. 1112 [holding the district court's explanation was insufficient to sustain a 25 percent cut based on duplication of effort where the court "gave no specific explanation as to which fees it thought were duplicative, or why"]; see also *Gates v. Deukmejian* (9th Cir. 1992) 987 F.2d 1392, 1400 [percentage cuts "subject to heightened scrutiny" and "the district court . . . failed to articulate a 'concise but clear' explanation for why the ten percent across-the-board reduction . . . properly compensated for plaintiffs' overbilling or duplication"].) Limon also notes the Court of Appeal in

Kerkeles v. City of San Jose (2015) 243 Cal.App.4th 88 (*Kerkeles*) used this federal rule in reversing an award of attorney fees where the trial court reduced the lodestar amount by 50 percent without providing a sufficient explanation. (*Id*. at p. 104.)

Kerkeles is inapposite because the plaintiff in that case was awarded attorney fees as the prevailing party in a civil rights action filed under 42 United States Code section 1983. Thus, attorney fees were awarded under 42 United States Code section 1988. That is why the *Kerkeles* court used the federal rule described above in assessing the propriety of the award. (*Kerkeles*, *supra*, 243 Cal.App.4th at pp. 98-99.) Here, the award of attorney fees was made pursuant to section 1021.5, and the California rule is that a trial court is not required to state its reasons for reducing the amount of compensable hours. If a sufficient justification appears to this court, we must affirm. (See *Gorman v. Tassajara Development Corp.*, *supra*, 178 Cal.App.4th at p. 101.) For the reasons already stated, that standard is easily met.

We conclude the trial court did not abuse its discretion in reducing the amount of compensable hours from 845.7 to 640 hours.

IV

Apportionment of the Award

We do, however, agree with Limon's assertion the trial court abused its discretion in apportioning 40 percent of the responsibility for payment of attorney fees to Limon.

In *Woodland Hills*, *supra*, 23 Cal.3d 917, our Supreme Court stated: "Although section 1021.5 does not specifically address the question of the propriety of a partial award of attorney fees, we believe that if the trial court concludes that *plaintiffs'* potential *financial gain* in this case is such as to warrant placing upon them a portion of the attorney fee burden, the section's broad language and the theory underlying the private

attorney general concept would permit the court to shift only an appropriate portion of the fees to the losing party or parties." (*Id*. at p. 942, italics added.) The court then added the following example in a footnote: "[I]f the trial court finds that *plaintiffs'* potential benefit was such that individuals in their position could reasonably have been expected to incur attorney fees if the amount of the fee bore a more reasonable relation to such benefit, the trial court, in awarding fees under section 1021.5, may deduct from the total reasonable attorney fee an amount reflecting the fee that *plaintiffs* could reasonably have been expected to bear themselves." (*Id*. at p. 942, fn. 13, italics added.)

In *Collins*, *supra*, 205 Cal.App.4th 140, our colleagues at the Second Appellate District elaborated on the analysis to be used in making such an apportionment. There, the trial court awarded attorney fees under section 1021.5 in a class action lawsuit and apportioned 40 percent of the attorney fee responsibility to the plaintiffs, to be paid out of the class restitution fund recovered in the lawsuit. (*Id*. at pp. 149-150.) The Court of Appeal held such an apportionment was not an abuse of discretion. (*Id*. at p. 158.) The court first explained a trial court's "decision to apportion fees implicates the requirements that 'the necessity and financial burden of private enforcement . . . are such as to make the award appropriate . . .' and 'such fees should not in the interest of justice be paid out of the recovery, if any.' " (*Id*. at p. 154, quoting § 1021.5, factors (b) & (c).)

Here, as the trial court accurately stated in awarding attorney fees to Limon under section 1021.5: "[T]here is no 'recovery.' The relief granted in this action was to reverse [the Department's] determination that the *Limon I* judgment is not an enforceable obligation, so that funds could be released to the Successor Agency to perform its obligations." We therefore confine our analysis to whether or not apportionment was warranted under section 1021.5's requirement that "the necessity and financial burden of

private enforcement . . . are such as to make the award appropriate." (*Id*., factor (b).) "As the statute makes clear, [this factor] focuses not on plaintiffs' abstract personal stake, but on *the financial incentives and burdens* related to bringing suit." (*In re Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1216, italics added.)

Returning to *Collins*, *supra*, 205 Cal.App.4th 140, with respect to a trial court's decision to apportion attorney fee responsibility under this factor, the Court of Appeal explained: "The necessity and financial burden requirement encompasses two issues: ' " 'whether private enforcement was necessary and whether the financial burden of private enforcement warrants subsidizing the successful party's attorneys.' " [Citation.]' [Citation.] Private enforcement is necessary only if public enforcement of the 'important right affecting the public interest' (§ 1021.5) at issue is inadequate. [Citation.] The trial court's finding that plaintiffs had satisfied the statutory requirements necessarily implies a finding that private enforcement was necessary, and its decision to apportion fees does not implicate this part of the necessity and financial burden requirement. [¶] The financial burden of private enforcement concerns not only the costs of litigation, but also *the financial benefits reasonably expected by the successful party*. [Citation.] The appropriate inquiry is whether the financial burden of the plaintiff's legal victory outweighs the plaintiff's personal financial interest. [Citations.] An attorney fee award under section 1021.5 is proper unless the plaintiff's reasonably expected financial benefits exceed by a substantial margin the plaintiff's actual litigation costs. [Citation.] The focus in this regard is on the plaintiff's incentive to litigate absent a statutory attorney fee award." (*Id*. at p. 154, italics added.)

The court continued: "The successful litigant's reasonably expected financial benefits are determined by discounting the monetary value of the benefits that the

successful litigant reasonably expected at the time the vital litigation decisions were made by the probability of success at that time. [Citations.] The resulting value must be compared with the plaintiff's litigation costs actually incurred, including attorney fees, expert witness fees, deposition costs and other expenses. [Citation.] The comparison requires a ' "value judgment whether it is desirable to offer the bounty of a court-awarded fee in order to encourage litigation of the sort involved in this case. . . . [A] bounty will be appropriate except where the expected value of the litigant's own monetary award exceeds by a substantial margin the actual litigation costs." ' [Citation.] [¶] *Apportionment of attorney fees may be appropriate under section 1021.5 if the court concludes that the successful litigant's reasonably expected financial benefits were sufficient to warrant placing part of the fee burden on the litigant.* [Citations.] In those circumstances, the court may award against the opposing party the difference between the full amount of reasonable attorney fees and an amount that the successful litigant could reasonably be expected to bear. [Citation.] Thus, an attorney fee award under section 1021.5 is not necessarily an all-or-nothing proposition." (*Collins*, *supra*, at pp. 154-156, fns. omitted, italics added.)

Concluding the apportionment ordered in *Collins* was not an abuse of discretion, the court explained, "the full monetary value of the judgment," i.e., the combined value of both the monetary recovery paid into the class restitution fund and debt reduction of class members not receiving restitution out of the fund, was over $900,000, while 40 percent of the attorney fee award apportioned to them was about $230,000, "or approximately 25 percent of the value of the judgment." (*Collins*, *supra*, at p. 158.) The court held this was "within the range of typical attorney fee awards and that the trial

court's finding that plaintiffs could reasonably be expected to bear that amount was not an abuse of discretion." (*Ibid.*)

As should be clear from our extended discussion of the analysis employed in *Collins*, it is "the financial benefits reasonably expected by the successful party," i.e., Limon, that must be weighed against "the financial burden of [Limon's] legal victory" in determining whether or not Limon should be required to pay a portion of their own attorney fees. (*Collins*, *supra*, at p. 154.) However, in requiring Limon to pay 40 percent of the awarded fees, the trial court counted the $795,000 attorney fee award in *Limon I* as part of the financial benefits Limon reasonably expected to receive out of the *Limon II* litigation. Conflating Limon's financial interests with those of their attorneys was an abuse of discretion.

Because the trial court apportioned 40 percent of the attorney fee responsibility to Limon on the basis of not only their financial incentives in bringing the *Limon II* action, but also that of their attorneys, we must remand the matter for reconsideration of the attorney fee motion.

DISPOSITION

The May 18, 2016 order awarding attorney fees is reversed and the matter is remanded to the trial court for reconsideration of whether or not apportionment of fee responsibility is warranted based solely on plaintiffs' financial incentives, if any, in bringing the *Limon II* action.

Plaintiffs Marina Limon, Alfredo Cordero, Celia Gonzalez, Jose Sanchez, Ana

Rose Olea, Elidia Gonzalez, Ivan Torres, Javier Ibarra, and the Kennedy Commission are awarded their costs on appeal. (Cal. Rules of Court, rule 8.278(a).)

/s/
HOCH, J.

We concur:

/s/
RAYE, P. J.

/s/
ROBIE, J.